

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

AUG 05 2004

To:

MUCZYNSKI, Michael
MARSHALL, GERSTEIN & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
ETATS-UNIS D'AMERIQUE

PCT

MARSHALL GERSTEIN

WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY
EXAMINING AUTHORITY
(PCT Rule 66)

Date of mailing (day/month/year)	30.07.2004
-------------------------------------	------------

Applicant's or agent's file reference 29501/38616A	REPLY DUE	within 2 month(s) from the above date of mailing
International application No. PCT/US 03/06995	International filing date (day/month/year) 07.03.2003	Priority date (day/month/year) 20.11.2002
International Patent Classification (IPC) or both national classification and IPC B65D35/36		
Applicant COSMOLAB, INC. et al.		DOCKETED: <u>9/30/04</u>

1. The written opinion established by the International Searching Authority:
 is is not
 considered to be a written opinion of the International Preliminary Examining Authority
2. This first report contains indications relating to the following items:
 Box No. I Basis of the opinion
 Box No. II Priority
 Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 Box No. IV Lack of unity of invention
 Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 Box No. VI Certain documents cited
 Box No. VII Certain defects in the international application
 Box No. VIII Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.
When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(e).
How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3.
For the form and the language of the amendments, see Rules 66.8 and 66.9.
Also: For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
 For an informal communication with the examiner, see Rule 66.6.
 For an additional opportunity to submit amendments, see Rule 66.4.
If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is: 20.03.2005

Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Lendfers, P Telephone No. +49 89 2399-2933
---	---



**WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY**

International application No.
PCT/US 03/06995

Box No. I Basis of the opinion

- With regard to the **language**, this opinion is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This opinion is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - international search (under Rules 12.3 and 23.1(b))
 - publication of the international application (under Rule 12.4)
 - international preliminary examination (under Rules 55.2 and/or 55.3)
 - With regard to the **elements** of the international application, this opinion is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-8 as originally filed

Claims, Numbers

1-14 received on 01.06.2004 with letter of 19.05.2004

Drawings, Sheets

1/1 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
 - 3. The amendments have resulted in the cancellation of:
 - the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):
 - 4. This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):

**WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY**

International application No.
PCT/US 03/06995

**Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes:	Claims	1-10,12,14
	No:	Claims	11,13
Inventive step (IS)	Yes:	Claims	1-10,12,14
	No:	Claims	11,13
Industrial applicability (IA)	Yes:	Claims	1-14
	No:	Claims	

2. Citations and explanations:

see separate sheet

**WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY
(SEPARATE SHEET)**

International application No.
PCT/US 03/06995

1). Having regard to independent claim 11, document WO-A-02/10029 discloses a cosmetic applicator for holding and applying a cosmetic mass, comprising a collapsible reservoir comprising a generally cylindrical wall sealed at one end, and a cylindrical applicator head joined to said reservoir, the interior of said applicator head communicating with the interior of said reservoir, said applicator head comprising a rigid base portion adjacent said reservoir, a tip portion comprising one or more discharge openings, and the outer wall of said applicator head comprising an outer coupler (see in particular page 2, line 26, to page 4, line 11, and figures 1 to 8).

The subject-matter of independent claim 11 differs from what is described in document WO-A-02/10029 in that a plurality of fibers are disposed on the outer surface of said tip. However, this feature has already been employed for the same purpose in a similar applicator, see document US-A-5 462 798, abstract. It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to apply this feature with corresponding effect to an applicator according to document US-A-3 016 561, thereby arriving at an applicator according to claim 1, without the use of inventive skill. Thus, the subject-matter of claim 1 does not involve an inventive step and does not satisfy the criterion set forth in Article 33(3) PCT.

2). Document WO-A-02/10029 discloses as well the feature of dependent claim 13 (see page 2, line 28). Therefore, the subject-matter of dependent claim 13 does not provide a positive contribution to inventive step, and claim 13 does not satisfy the criterion set forth in Article 33(3) PCT.